



05-16-2003

U.S. Patent & TMO/TM Mail Rpt. Dt. #40

TTAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Test Masters Educational Services, Inc.)	Concurrent Use No. 94002016
)	
v.)	
)	
Robin Singh)	
)	
)	
)	

REPLY BRIEF

Robin Singh respectfully requests that the Board consider this Reply Brief, which is being filed for the purpose of clarifying several misrepresentations.

1. Test Masters Educational Services, Inc.' (TES) assertion that Mr. Singh's request for acceptance of his late-filed response to the Board Order dated January 9, 2003 should be rejected, even though neither Mr. Singh nor his attorneys received the Order, because Mr. Singh did not comply with a due diligence requirement is not understood. TES appears to be asserting that Mr. Singh had an obligation to check whether his registration was cancelled and that his failure to do so negates Mr. Singh's showing of good cause for failure to inquire about the Board Order that was never received.

This reasoning does not make sense. How would checking the status of his registration have alerted Mr. Singh to the Board's Order?

Further, even if it would have alerted him, there is no authority supporting the assertion that Mr. Singh had an obligation to check the status of his registration in January 2003. TES cites TMEP §413 in support of this assertion. However, TMEP §413 has been deleted and incorporated into §1705.05. Pursuant to TMEP §1705.05, "to be considered diligent, a party must inquire within one year of filing or receipt of a paper for which further action by the Office is expected." Thus, even if it were relevant to check the status of his registration, Mr. Singh would have been considered diligent because he had no obligation to do so in January 2003.

2. TES asserts that Mr. Singh has no standing to request that TES' application be remanded to the Examining Attorney and then refused registration on the grounds that it is merely descriptive.

Again, Mr. Singh disagrees. Mr. Singh will be harmed by the acceptance of an unrestricted application of TES for the mark TEST MASTERS.

Mr. Singh has already been through a lawsuit with TES in which TES asserted that the mark TESTMASTERS is descriptive for test preparation services, and in which Mr. Singh was accused by TES of fraud on the PTO for "failure to disclose that the mark is descriptive."

Mr. Singh's registration was cancelled because of the lawsuit. He had to file a new application, which pursuant to the Order of the Court, does not include the State of Texas.

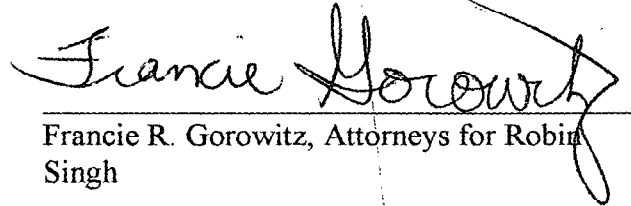
Clearly, Mr. Singh has been harmed by TES. The publication of TES' application, without rejection on the grounds of descriptiveness, will harm him further since it will require Mr. Singh to expend additional time and money in an opposition proceeding, to establish the

descriptiveness of a mark that TES admitted it adopted because it was "extremely descriptive."

Accordingly, Mr. Singh does have standing and his request should be considered and granted.

Dated: May 13, 2003

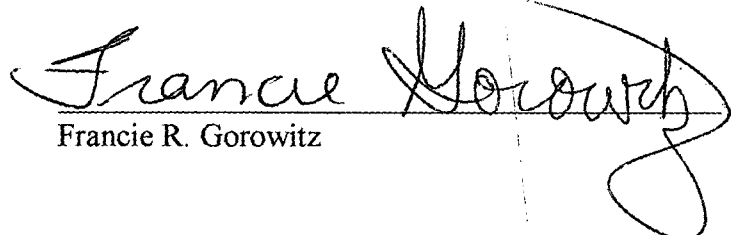
Respectfully submitted,



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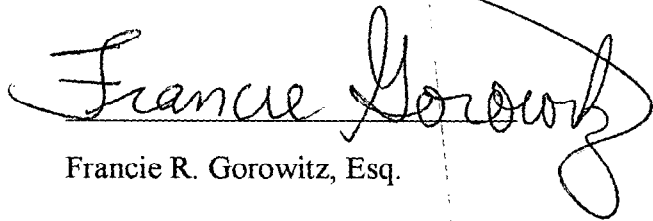
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on May 13, 2003



Francie R. Gorowitz

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing, REPLY BRIEF was served by depositing it with the United States Postal Service as first class mail in an envelope addressed to Michelle P. Schwartz, Esq., Hughes & Luce L.L.P., 1717 Main Street, Suite 2800. Dallas, Texas 75201 on May 13, 2003.


Francie R. Gorowitz, Esq.